

OLC 78-1590/2
27 July 1978

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MEMORANDUM FOR THE RECORD

SUBJECT: Special Prosecutor Legislation (H.R. 9705)

1. I met today with Simon Lazarus, Associate Director, Domestic Policy Staff, to discuss our concern with subsection 595(a) of H.R. 9705, the Special Prosecutor legislation. Also present at the meeting in Mr. Lazarus' office were Mr. John Gavin, Office of Legal Counsel at the Department of Justice; Susan Geiger, OMB; and Margaret McKenna, Deputy Counsel to the President. I began the meeting by expressing our concern that the Special Prosecutor arguably would have the authority under subsection 595(a) to make public whatever information he deemed appropriate in connection with his investigative and prosecutorial authorities, including information that is classified or protected against disclosure by statute.

2. There was agreement that the language of subsection 595(a), coupled with the language of section 594 which outlines the overall jurisdiction and responsibilities of the Special Prosecutor, raised sufficient ambiguities as to whether the Special Prosecutor would have completely independent authority to disclose publicly information, so that legislative history would serve the purpose of making clear that the Special Prosecutor would not be able to release on his own information that is classified or protected against disclosure by statute. We discussed also the political problems that likely would crop up if we attempted to amend subsection 595(a) on the floor to specify that the Special Prosecutor would not have such authority. The bottom line is that we will seek to develop legislative history on this point.

3. We discussed various ways of obtaining the necessary legislative history, and agreed the most desirable course of action would be to develop a floor colloquy between a member of the House Intelligence Committee and the floor manager of H.R. 9705, which Mr. Lazarus speculated would be Representative Mann. Mr. Lazarus said we could go ahead and do this as an Administration position. I told him we would go to work on it and keep him informed. (H.R. 9705 is not yet scheduled for floor action, but is likely to come up before Congress adjourns.)

4. As the meeting broke, I asked Mr. Lazarus when we would be able to get together with him to discuss the Civil Service Reform legislation. He said he would try to arrange a meeting tomorrow.



Chief, Legislation Staff

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